



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

AUG 6 2009

Mr. Randy Hillman
Vice President of Pipelines
General Manager of Logistics and Utilities
Alon USA, LP
P.O. Box 1311
Big Spring, TX 79721

RE: CPF No. 5-2004-5021

Dear Mr. Hillman:

Enclosed is the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$200,000. When the civil penalty has been paid, as determined by the Director, Western Region, PHMSA, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Chris Hoidal, Western Region Director, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6162 5647]

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of)

Alon USA, LP,)

Respondent.)

CPF No. 5-2004-5021

FINAL ORDER

From August 18 to 22, 2003, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), Western, Central, and Southwest Regions, in conjunction with the Texas Railroad Commission (TRC), conducted an inspection of the pipeline Integrity Management Program (IMP) of Alon USA, LP (Alon or Respondent), a company with crude oil refineries, pipeline facilities, and refined-product marketing operations in several Western, Rocky Mountain, and Southwestern states. This inspection, which occurred at the company's refinery in Big Spring, Texas,¹ included a review of the company's IMP program for the 1,265 miles (279 miles of interstate and 986 miles of intrastate) pipelines that Alon was currently operating to transport crude oil and refined-petroleum products.²

As a result of the August 2003 inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated July 12, 2004, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed various violations of 49 C.F.R. § 195.452, assessing Alon a civil penalty of \$215,000 for 10 of the alleged violations, and ordering the company to take certain actions to comply with the IMP regulations.

Alon responded to the Notice by letter dated August 11, 2004 (Response). It disputed nearly all of the violations, requested that the proposed civil penalty be reduced or eliminated, and argued that the proposed compliance order was not necessary. Respondent did not request a hearing and, therefore, has waived its right to one.

¹ In February 2002, OPS and TRC conducted a prior joint inspection of Alon's Big Spring refinery. *See, In the Matter of Alon USA*, C.P.F. 5-2002-5017 (Dec. 31, 2002).

² PHMSA's records indicate that after the August 2003 OPS inspection, Holly Energy Partners acquired Alon's only interstate hazardous liquid pipeline system, the Trust-River System. Nonetheless, Alon's 2008 annual report states that Respondent still operates 42 miles of pipelines used for the transportation of petroleum and other refined products, that 21 miles of those pipelines are designated as segments that could affect High Consequence Areas (HCAs), and that an additional four miles of non-HCA pipelines are also used in the transportation of crude oil.

FINDINGS OF VIOLATION

Item 1 of the Notice alleged that Alon violated 49 C.F.R. § 195.452(b)(2), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)

(b) *What program and practices must operators use to manage pipeline integrity?* Each operator of a pipeline covered by this section must:

(1)

(2) Include in the program an identification of each pipeline or pipeline segment in the first column of the following table not later than the date in the second column:

Pipeline	Date
Category 1	December 31, 2001.
Category 2	November 18, 2002.
Category 3	Date the pipeline begins operation.

The Notice alleged that Alon violated 49 C.F.R. § 195.452(b)(2) by failing to identify all of the covered segments in its pipeline system that could affect High Consequence Areas (HCAs)³ as of August 2003, the date of the OPS inspection.⁴ Specifically, the Notice alleged that the TRC had previously cited Respondent for committing a similar violation of its intrastate regulations and that OPS had ordered the company to amend its written segment-identification procedures in a December 31, 2002 Order Directing Amendment (ODA).⁵ It further alleged that Alon's first contractor (Contractor A) failed to complete the pipeline segment-identification process by December 31, 2001, the applicable deadline under the regulations; that Respondent was not using the (albeit incomplete) results of Contractor A's segment identification evaluation in its current IMP; and that the company could not explain how Contractor A performed his segment-identification evaluation or obtained his partial results. Finally, the Notice stated that Alon could not verify the total mileage of interstate pipeline segments in its system that could affect HCAs.

³ An HCA is defined for purposes of Part 195 as a "commercially navigable waterway, . . . [a] high population area, . . . [a]n other populated area, . . . [or] [a]n unusually sensitive area . . ." 49 C.F.R. § 195.450. A commercially navigable waterway is "a waterway where a substantial likelihood of commercial navigation exists;" a high population area is "an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile;" an other populated area is "a place, as defined by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area;" *id.*, and an unusually sensitive area is "a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release." 49 C.F.R. § 195.6.

⁴ Given the total pipeline mileage operated by Alon and the installation date of the lines in question, the company had an obligation under § 195.452(b)(2) to identify all of its pipeline segments that could affect HCAs on or before December 31, 2001. *See* 49 C.F.R. § 195.452(a)(1) ("Category 1 includes pipelines existing on May 29, 2001, that were owned or operated by an operator who owned or operated a total of 500 or more miles of pipeline subject to this part . . ."); *see also* 49 § C.F.R. 195.1(a)-(b) (defining scope of applicability of Part 195).

⁵ *In the Matter of Alon USA*, C.P.F. 5-2002-5017 (Dec. 31, 2002).

Respondent disputed these allegations in its Response. Specifically, Alon argued that it had identified all of its pipeline segments that could affect HCAs by December 27, 2001, four days before the applicable regulatory deadline. Respondent also argued that it was using the data derived from Contractor A's segment identification evaluation in its IMP, and was augmenting that data on the basis of a revised stream-and-waterway-transport methodology, developed by a subsequent contractor (Contractor B). Alon further argued that a description of Contractor A's segment-identification methodology was on file with the company at the time of the OPS inspection but acknowledged that Contractor A could not provide a supporting rationale for that methodology when requested. Finally, Respondent argued that it received an updated analysis of its HCA pipeline mileage, as well as other related data, on April 17, 2002, but that OPS rejected that information as based upon Contractor A's flawed methodology.

Respondent's arguments are not persuasive. The December 2002 ODA found that, as of February 2002, the date of a prior OPS-TRCC joint inspection and some *two months after* the deadline in § 195.452(b)(2) for identifying all could-affect HCA segments for Category 1 pipelines, Alon's segment-identification procedures were still inadequate.⁶ Alon also admitted in its Response in this proceeding that Contractor A could not provide a supporting rationale for his methodology or reproduce his own results on request, and that "[a]t the time of the August[] 2003 inspection," Contractor B "had just completed the segment identification process using stream and waterway transport modeling." Thus, there is no dispute that Alon's written procedures for performing the segment-identification process did not comply with the IMP regulations as of December 31, 2001, thereby invalidating any evaluation actually conducted pursuant to those procedures as of the 2001 deadline. Similarly, there is also no dispute that Alon's new consultant, Contractor B, did not complete its subsequent segment-identification evaluation until well after that deadline. Accordingly, upon consideration of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(b)(2) by failing to identify all of its pipeline segments that could affect HCAs on or before December 31, 2001.

Item 2 of the Notice alleged that Alon violated 49 C.F.R. §§ 195.452(b)(1) and (4)-(5), which state:

§ 195.452 Pipeline integrity management in high consequence areas.

(a)
 (b) *What program and practices must operators use to manage pipeline integrity?* Each operator of a pipeline covered by this section must:

(1) Develop a written integrity management program that addresses the risks on each segment of pipeline in the first column of the following table not later than the date in the second column:

Pipeline	Date
Category 1	March 31, 2002.

⁶ OPS also notified Alon, by letter dated October 14, 2003, that the segment identification procedures reviewed during the August 2003 inspection were not the same as the procedures it submitted several months earlier in response to the December 2002 ODA. The company responded to that letter by providing OPS with yet another version of those procedures, dated November 11, 2003.

- (2) . . .
- (4) Include in the program a framework that--
 - (i) Addresses each element of the integrity management program under paragraph (f) of this section, including continual integrity assessment and evaluation under paragraph (j) of this section; . . .
- (5) Implement and follow the program.

The Notice alleged that Alon violated 49 C.F.R. §§ 195.452(b)(1) and (4)-(5) by failing to develop, implement, and follow a written IMP on or before the applicable deadline of March 31, 2002, or by the date of the August 2003 inspection. Specifically, the Notice stated that Alon issued a draft IMP on August 13, 2003, less than one week before the OPS inspection, but that Respondent could not demonstrate, through adequate documentation, that it had adopted or implemented a compliant IMP by March 31, 2002.

Alon disputed these allegations in its Response. Specifically, Respondent argued that OPS actually reviewed the third edition of its IMP, not an early draft, during the August 2003 inspection. Alon submitted three versions of its written IMP to support these assertions, dated February 17, 2002, March 18, 2002, and August 13, 2003, respectively.

These arguments are not persuasive. In fact, the evidence submitted by Alon (i.e., the various editions of its IMP) only serves to confirm the allegations in the Notice. Alon had an obligation to *develop, implement, and follow* a written IMP on or before March 31, 2002. With respect to development, Respondent's February 17, 2002 IMP was clearly inadequate. That is reflected in the findings of the December 2002 ODA and confirmed on further review in this proceeding. Indeed, the February 2002 IMP omits certain necessary information and admittedly relies in other instances on unverified information.⁷ Alon's March 18, 2002 IMP suffers from many of these same inadequacies.⁸

In addition to inadequate development of an IMP, there is also no evidence that Alon actually implemented any version of it from March 31, 2002, the deadline for initially developing the program, until the date of the August 2003 OPS inspection.⁹ In fact, the OPS inspector noted in his report from the August 2003 inspection that "the first traceable iota of movement with respect to Alon's [IMP] in the previous 16 months" occurred when the company hired its new

⁷ Response at Attachment 2.0, pp. 17-18, 20. For instance, under the subheading "Evolving Risk Analysis Capabilities," the February 2002 IMP simply states "**** Discuss linear model" and "**** Table of risk factor coefficients." *Id.* at 17. Similarly, under "What are the risk factors for establishing an assessment schedule (for both the baseline and continual integrity assessments)," it notes "****Discuss limitations," "****Discuss arbitrary selection of parameters," "****Discuss confirmation of the risk model," "Discuss model by risk analysis," and "****Discuss more complicated risk analysi[s.]" *Id.* at 18. Finally, under the subheading for "Computerized Records," the February 2002 IMP twice states, in conjunction with a listed procedure, "Confirm this is so." *Id.* at 20.

⁸ Response at Attachment 2.1, pp. 32 (notation to insert missing schedule for baseline evaluation), 56 (notation to insert missing American Petroleum Institute Standard).

⁹ See 49 C.F.R. § 195.452(l) (requiring an operator to maintain records of "actions taken . . . to implement . . . each element" of an IMP).

consultant some two weeks prior to that inspection. Accordingly, upon consideration of all of the evidence, I find that Respondent violated 49 C.F.R. §§ 195.452(b)(1) and (4)-(5) by failing to develop an adequate written IMP on or before March 31, 2002, and to implement and follow an adequate written IMP from that date until the August 2003 OPS inspection.

Item 3 of the Notice alleged that Alon violated 49 C.F.R. § 195.452(f)(2) and (c)(1), which state, in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(f) *What are the elements of an integrity management program?* An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(1) . . .

(2) A baseline assessment plan meeting the requirements of paragraph (c) of this section . . .

The Notice alleged that Alon violated 49 C.F.R. § 195.452(f)(2) by failing to include a compliant Baseline Assessment Plan (BAP) in its IMP. Specifically, the Notice stated that Respondent lacked a BAP (or any of the information that must be included in one) at the time of the inspection. The Notice also stated that Alon's personnel informed the OPS inspection team that the development of its BAP could not be completed until its new consultant, Contractor B, had finished the revised segment identification evaluation.

Alon admitted in its Response that “[a]t the time of the August 2003 inspection, [it only] had a limited documented [BAP],” and that it “couldn’t complete a fully documented risk[-]based assessment until the HCA identification analysis had been updated . . .”¹⁰ Accordingly, upon consideration of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(f)(2) by failing to include a compliant BAP in its IMP as of the date of the OPS inspection.

Items 4(a), (b), and (c) of the Notice alleged that Alon violated 49 C.F.R. § 195.452(e)(1) and (g)(1)-(4), which state, in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(e) *What are the risk factors for establishing an assessment schedule (for both the baseline and continual integrity assessments)?*

(1) An operator must establish an integrity assessment schedule that prioritizes pipeline segments for assessment (see paragraphs (d)(1) and (j)(3) of this section). An operator must base the assessment schedule on all risk factors that reflect the risk conditions on the pipeline segment. The factors an operator must consider include, but are not limited to:

¹⁰ Response at 5.

- (i) Results of the previous integrity assessment, defect type and size that the assessment method can detect, and defect growth rate;
 - (ii) Pipe size, material, manufacturing information, coating type and condition, and seam type;
 - (iii) Leak history, repair history and cathodic protection history;
 - (iv) Product transported;
 - (v) Operating stress level;
 - (vi) Existing or projected activities in the area;
 - (vii) Local environmental factors that could affect the pipeline (e.g., corrosivity of soil, subsidence, climatic);
 - (viii) Geo-technical hazards; and
 - (ix) Physical support of the segment such as by a cable suspension bridge.
- (2) . . .
- (g) *What is an information analysis?* In periodically evaluating the integrity of each pipeline segment (paragraph (j) of this section), an operator must analyze all available information about the integrity of the entire pipeline and the consequences of a failure. This information includes:
- (1) Information critical to determining the potential for, and preventing, damage due to excavation, including current and planned damage prevention activities, and development or planned development along the pipeline segment;
 - (2) Data gathered through the integrity assessment required under this section;
 - (3) Data gathered in conjunction with other inspections, tests, surveillance and patrols required by this Part, including, corrosion control monitoring and cathodic protection surveys; and
 - (4) Information about how a failure would affect the high consequence area, such as location of the water intake.

Item 4(a) of the Notice alleged that Alon violated 49 C.F.R. § 195.452(e)(1) and (g)(1)-(4) by failing to establish an integrity assessment schedule that prioritized its pipeline segments for assessment on the basis of all risk factors and by failing to analyze all available information about the integrity of its entire pipeline system and the consequences of a failure. Specifically, the Notice alleged that Alon presented the OPS inspection team with a draft risk assessment method that had been copied verbatim from a textbook. The Notice also alleged that the company provided the inspection team with a risk-factor form (a document that it planned to use to collect information on its pipeline system) that was inconsistent with its draft risk assessment methodology. Finally, the Notice alleged that Alon could not demonstrate how it planned to use any of the data gathered from the risk-factor form in its IMP.

Alon admitted in its Response that it presented OPS with a draft risk assessment method taken verbatim from a textbook but “only as an example of the type of risk assessment tool *being developed* for [it] at the time.”¹¹ Respondent admitted, in other words, that it had not developed and was not implementing a compliant risk assessment method as of

¹¹ Response at 7 (emphasis added).

the date of the OPS inspection. Alon also necessarily acknowledged, by implication, that it failed to develop an integrity assessment schedule based upon a valid risk assessment methodology. Accordingly, I find that Alon violated 49 C.F.R. § 195.452(e)(1) and (g)(1)-(4) by failing to develop and perform a compliant risk assessment and information integration analysis in establishing its BAP schedule.

Item 4(b) of the Notice likewise alleged that Alon violated 49 C.F.R. § 195.452(e)(1) by failing to establish an integrity assessment schedule that prioritized its pipeline segments for assessment based on all risk factors that reflect the risk conditions on the pipeline segment. In particular, the Notice alleged that Alon limited its risk assessment method to only those pipeline segments that could affect HCAs, instead of collecting and integrating information on its *entire* pipeline system, including breakout tanks and pump stations.

In its Response, Alon argued that its risk assessment method included pump stations at the time of the inspection. Respondent acknowledged, however, that its analysis did *not* include breakout tanks until after the OPS inspection. On the basis of the latter admission, and upon consideration of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(e)(1) by failing to have a risk assessment method that incorporated the collection and integration of information on its entire pipeline system for use in establishing a compliant integrity assessment schedule.

Item 4(c) of the Notice similarly alleged that Alon violated 49 C.F.R. § 195.452(e)(1) by failing to establish an integrity assessment schedule that prioritized its pipeline segments for assessment based on all risk factors that reflect the risk conditions on the pipeline segment. Specifically, the Notice alleged that Respondent's IMP provided no guidance or information on the assignment of risk scores based on the subjective risk-assessment-method inputs. The Notice further stated that without such guidance, Alon's risk-scores (and any prioritization of its pipeline segments for integrity assessment on the basis thereof) would vary and be unreliable over time.

In its Response, Alon argued that its IMP included written assessment questions and formatted responses that dealt with risk ranking and submitted documentation of its written procedure.¹² Respondent did not, however, dispute the allegation that the former written procedure was not in place at the time of the OPS inspection. In addition, the document Alon submitted did not indicate the effective date of the procedure.¹³

Accordingly, upon consideration of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(e)(1) by failing to include proper guidance in its IMP on the assignment of risk scores based on the subjective risk-assessment-method inputs for use in establishing a compliant integrity assessment schedule.

¹² Response at Attachment 4.3.

¹³ Moreover, at least some of the questions listed on the written procedure of record are in need of further clarification. For example, the form asks, without further guidance, whether relationship with local authorities is "excellent," "good," or "poor," and whether the pipe material looks "excellent," "good," or "poor". Response at Attachment 4.3, pp. 5, 6.

Item 5 of the Notice alleged that Alon violated 49 C.F.R. § 195.452(l)(1), which states, in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(l) *What records must be kept?*

(1) An operator must maintain for review during an inspection:

(i) A written integrity management program in accordance with paragraph (b) of this section.

(ii) Documents to support the decisions and analyses, including any modifications, justifications, variances, deviations and determinations made, and actions taken, to implement and evaluate each element of the integrity management program listed in paragraph (f) of this section.

The Notice alleged that Alon violated 49 C.F.R. 195.452(l)(1) by failing to maintain proper documentation of the decisions and analyses, including any modifications, justifications, variances, deviations and determinations made, and actions taken, to implement and evaluate each element of its IMP. Specifically, the Notice stated that Alon failed to properly document the modifications it had previously made to its February 2002 IMP and that it lacked a procedure for tracking such changes.

In its Response, Alon disputed these allegations. In particular, Respondent argued that it had documented the changes made to its February 2002 IMP and that it had a procedure in place for making, implementing, and tracking such changes as of the date of the inspection. In support of its position, Alon submitted its written procedure for documenting changes to its IMP¹⁴ and a Master Change Log showing the changes that had been made to its IMP since July 3, 2003.¹⁵

This evidence, however, is not persuasive. First, the written procedure submitted by Alon is dated August 13, 2003, less than a week prior to the OPS inspection, and no other evidence exists that contradicts the OPS inspector's allegation that an adequate procedure was not in effect as of March 31, 2002, the date required under the regulation. Moreover, even if Alon had a written procedure in effect at that time, the Master Change Log makes no mention of the decisions, analyses, and actions the company had taken in transitioning from the February 2002 IMP to the March 2002 IMP. On the contrary, the first notation in the Master Change Log is dated July 2003, more than a year after Alon had transitioned from its February 2002 IMP to its March 2002 IMP. Furthermore, the Master Change Log characterizes the March 2002 edition as Alon's "[o]riginal" IMP, even though the company argued in its Response that the February 2002 IMP was the first written edition of that program. In other words, there is no evidence that Alon had a recordkeeping procedure prior to August 2003, even though the regulation required one as of March 31, 2002, or that the company followed such a procedure if in effect during that time period. Accordingly, upon consideration of the evidence of record, I find that

¹⁴ Response at Attachment 5.0.

¹⁵ Response at Attachment 5.1.

Respondent violated 49 C.F.R. § 195.452(l)(1) by failing to maintain documents supporting the decisions, analyses, and actions taken in modifying its February 2002 IMP.

Items 6(a), (b), and (c) of the Notice alleged that Alon had violated 49 C.F.R. §195.452(f)(3) and (g)(1)-(4), which state, in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(f) *What are the elements of an integrity management program?*

An integrity management program begins with the initial framework. An operator must continually change the program to reflect operating experience, conclusions drawn from results of the integrity assessments, and other maintenance and surveillance data, and evaluation of consequences of a failure on the high consequence area. An operator must include, at minimum, each of the following elements in its written integrity management program:

(1) . . .

(3) An analysis that integrates all available information about the integrity of the entire pipeline and the consequences of a failure (see paragraph (g) of this section); . . .

(g) *What is an information analysis?* In periodically evaluating the integrity of each pipeline segment (paragraph (j) of this section), an operator must analyze all available information about the integrity of the entire pipeline and the consequences of a failure. This information includes:

(1) Information critical to determining the potential for, and preventing, damage due to excavation, including current and planned damage prevention activities, and development or planned development along the pipeline segment;

(2) Data gathered through the integrity assessment required under this section;

(3) Data gathered in conjunction with other inspections, tests, surveillance and patrols required by this Part, including, corrosion control monitoring and cathodic protection surveys; and

(4) Information about how a failure would affect the high consequence area, such as location of the water intake.

Item 6(a) of the Notice alleged that Alon violated 49 C.F.R. § 195.452(f)(3) by failing to include in its IMP an analysis that integrated all available information about the integrity of its entire pipeline and the consequences of a failure. Specifically, the Notice alleged that Respondent's IMP did not include a compliant procedure for gathering, analyzing, and disseminating relevant information and findings on the integrity of each pipeline segment that could affect HCAs. For example, it alleged that Alon had not correlated the results of in-line inspection (ILI) tool runs on the Amdel Pipeline to determine if any of the dents that had been detected involved metal loss and had not compared the results of those ILI assessments to other information about that pipeline system.

In its Response, Alon stated that its metal loss repair criteria exceeded the applicable regulatory requirements. The strictness of Respondent's metal loss criteria is, however, not relevant to the violation alleged in the Notice, namely, that Alon lacked a *process* for integrating such ILI data upon its receipt. Alon also admitted that it had not developed any dent repair criteria until the adoption of its February 2002 IMP, and that it did not correlate the dent and metal loss data from these ILI tool runs until after the August 2003 OPS inspection.¹⁶ Accordingly, I find that Respondent violated 49 C.F.R. § 95.452(f)(3) by failing to include in its IMP an analysis that integrates all available information about the integrity of its entire pipeline and the consequences of a failure.

Item 6(b) of the Notice similarly alleged that Alon violated 49 C.F.R. § 195.452 (g)(1)-(4) by failing to include in its written IMP an adequate procedure for analyzing all available information about the integrity of its entire pipeline and the consequences of a failure. Specifically, the Notice stated the Respondent lacked a compliant procedure for collecting and integrating field input and local knowledge on potential changes to pipeline segments that could affect HCAs. For example, the Notice explained that Alon's IMP failed to specify the methods and personnel responsible for gathering such information, and that the program did not include a process for recording and disseminating that information.

Alon disputed this allegation in its Response, contending that it had a written procedure in place at the time of the OPS inspection for collecting and using data on potential changes to pipeline segments in HCAs. However, a review of Alon's supporting documentation¹⁷ shows that, while there was a procedure in place at that time, it failed to address any of the deficiencies cited in the Notice. Indeed, that procedure neither identifies the methods used nor the company personnel responsible for collecting data on pipeline segments in HCAs. Nor does it include a meaningful description of the process for recording or disseminating that information. Accordingly, I find that Respondent violated 49 C.F.R. § 195.452(g)(1)-(4) by failing to include in its written IMP an adequate procedure for analyzing all available information about the integrity of the entire pipeline and the consequences of a failure.

Item 6(c) of the Notice similarly alleged that Alon violated 49 C.F.R. § 195.452(g)(1)-(4) by failing to include in its written IMP an adequate procedure for analyzing all available information about the integrity of its entire pipeline and the consequences of a failure. In particular, the Notice stated that its IMP did not include any consideration of the risks associated with the operation—or the consequences of a failure—of pump stations or breakout tanks.

Respondent disputed this allegation in its Response. Specifically, Alon stated that its written IMP covered pump stations at the time of the OPS inspection. The company acknowledged, however, that it later revised some of its assumptions on the consequences

¹⁶ Response at Attachment 6.0 (relating to the correlation of dent and metal loss data dated December 8, 2003).

¹⁷ Response at Attachment 6.1, IMP-1.02-002 (revised as of August 13, 2003).

of a pump station failure and that it did not include breakout tanks in its IMP until after the OPS inspection.

Upon consideration of all the evidence of record, including Alon's admission that its IMP did not include breakout tanks at the time of the OPS inspection, I find that Respondent violated 49 C.F.R. § 195.452(g)(1)-(4) by failing to include in its written IMP an adequate procedure for analyzing all available information about the integrity of its entire pipeline and the consequences of a failure.

Items 7(b) of the Notice alleged that Alon violated 49 C.F.R. § 195.452(i)(2), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area?*

(1) . . .

(2) *Risk analysis criteria.* In identifying the need for additional preventive and mitigative measures, an operator must evaluate the likelihood of a pipeline release occurring and how a release could affect the high consequence area. This determination must consider all relevant risk factors, including, but not limited to: . . .

The Notice alleged that Alon violated 49 C.F.R. § 195.452(i)(2) by failing to perform a proper risk analysis to identify the need for additional preventive and mitigative measures to protect HCAs. Specifically, the Notice alleged that Respondent did not adequately consider in its draft risk assessment the consequences of pipeline releases and how such releases could affect HCAs.

Respondent disputed this allegation in its Response, contending that its Automated Risk Assessment Tool (ARAT) “uses the impact to HCAs as the consequence for the occurrence of a threat” and the development of “threat lists” to determine the possible events that might occur and to develop preventive and mitigative measures. Alon also noted that at the time of the OPS inspection, it had a written procedure on preventative and mitigative measures.¹⁸

These arguments, however, are not responsive to the allegation in the Notice. First, the ARAT system was not operational at the time of the August 2003 OPS inspection and, therefore, is not relevant. Second, the written procedure on preventative and mitigative measures that Respondent submitted only addressed the potential consequences of a failure in a cursory fashion. Third, and most importantly, that procedure relied on the same flawed methodologies—i.e., the inadequate identification of pipeline segments that could affect HCAs, the lack of integrated information on the integrity of its pipeline system, and inadequate risk assessments—described at length in the prior sections of this Final Order. Accordingly, upon consideration of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(i)(2) by failing to

¹⁸ Response at 11 and Attachment 7.1, IMP-4.001-010, Rev. 1.

conduct a proper risk analysis to identify the need for additional preventative and mitigative measures to protect HCAs.

Item 8 of the Notice alleged that Alon violated 49 C.F.R. § 195.452(j)(1), which states, in relevant part:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?*

(1) *General.* After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

The Notice alleged that Alon violated 49 C.F.R. § 195.452(j)(1) by failing to specify in its IMP a time frame, after completing its BAP, for continuing to assess the line pipe at specified intervals and to periodically re-evaluate the integrity of each pipeline segment that could affect an HCA. The Notice further alleged that Alon failed to include a time frame in which to conduct an evaluation to determine whether reassessments should be performed at shorter intervals.¹⁹

Respondent disputed this allegation in its Response, contending that its IMP now includes criteria for requiring reassessments within a shorter interval.²⁰ Alon has not, however, refuted the allegation that no such procedure existed at the time of the OPS inspection. In addition, unlike some of the other written procedures submitted by Respondent, the one at issue here includes no effective date. Thus, there is no evidence in the record that contradicts the OPS inspector's allegation that Alon's IMP included no such time frame during the inspection. Accordingly, upon consideration of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(j)(1) by failing to include in its IMP a time frame, after completing its BAP, for continuing to assess the line pipe at specified intervals and to periodically re-evaluate the integrity of each pipeline segment that could affect an HCA.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

WITHDRAWAL OF ALLEGATION

Items 7(a) of the Notice alleged that Alon violated 49 C.F.R. § 195.452(i)(3), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

¹⁹ See 49 C.F.R. § 195.452(j)(2)-(3).

²⁰ Response at Attachment 8.0, IMP-4.01-009.

(i) *What preventive and mitigative measures must an operator take to protect the high consequence area?*

(1) . . .

(3) *Leak detection.* An operator must have a means to detect leaks on its pipeline system. An operator must evaluate the capability of its leak detection means and modify, as necessary, to protect the high consequence area. An operator's evaluation must, at least, consider, the following factors—length and size of the pipeline, type of product carried, the pipeline's proximity to the high consequence area, the swiftness of leak detection, location of nearest response personnel, leak history, and risk assessment results.

The Notice alleged that Alon violated 49 C.F.R. § 195.452(i)(3) by failing to conduct a proper risk analysis to determine what additional preventive and mitigative measures might be needed to protect HCAs. Specifically, the Notice stated that Alon's risk analysis did not adequately evaluate the capability of its leak detection system. In support of that allegation, the Notice cited Respondent's purported failure to consider an incident that occurred on February 11, 2001, and to determine whether that incident justified making any changes to its leak detection system.

Respondent disputed these allegations in its Response. After noting that the February 2001 incident preceded the effective date of the IMP regulations,²¹ Alon argued that its investigation of the leak showed that the affected line did not experience any concurrent decrease in operating pressure and that the leak would not have been detected by a lower alarm set point. Therefore, Response contended that this incident did not warrant any changes to its leak detection system. In addition, Respondent alleged that the OPS inspectors did not ask for or review any of the documents related to its investigation of this leak, including the reports Alon filed with TRC and the U.S. Environmental Protection Agency.

The evidence of record is not sufficient to sustain the violation alleged in Item 7(a) of the Notice. In particular, Alon performed a contemporaneous investigation of the February 2001 leak, and the record suggests that OPS may not have reviewed all of the relevant documentation. For example, the OPS inspector indicated that the line in question was shut-in at the time of the leak, but Respondent's documents show that the line had recently resumed operation. Given that OPS apparently did not consider all of the circumstances surrounding the incident, and upon consideration of all of the evidence, I am withdrawing Item 7(a) of the Notice as not supported by the evidence.

Item 9 of the Notice alleged that Alon violated 49 C.F.R. § 195.452(k), which states:

§ 195.452 Pipeline integrity management in high consequence areas.

(a) . . .

(k) *What methods to measure program effectiveness must be used?*

An operator's program must include methods to measure whether the program is effective in assessing and evaluating the integrity of each pipeline segment

²¹ Response at Attachment 7.0.

and in protecting the high consequence areas. See Appendix C of this part for guidance on methods that can be used to evaluate a program's effectiveness.

The Notice alleged that Alon violated 49 C.F.R. § 195.452(k) by failing to include in its IMP methods to measure whether the program was effective in assessing and evaluating the integrity of each pipeline segment and in protecting HCAs. Specifically, the Notice alleged that while the company had a good candidate list of performance measures to be used to evaluate the effectiveness of its IMP, its program did not include a methodology for interpreting and evaluating those measures.

Respondent disputed this allegation. Specifically, Alon argued that at the time of the OPS inspection, the company had a written procedure on the performance measures it planned to use in evaluating the effectiveness of its program, and that it revised that procedure following the inspection. Alon submitted a copy of both procedures. A review of those procedures contradicts OPS' characterization of the performance measurements in place at the time of the inspection as a mere list of potential "candidates."²² Upon reviewing the relevant evidence of record, I find Alon's Response persuasive and am, therefore, withdrawing the allegation of violation in Item 9 of the Notice.

ASSESSMENT OF PENALTY

Sections 49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of a civil penalty, I consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require.

The Notice proposed a total civil penalty of \$200,000 for the probable violations of 49 C.F.R. § 195.452 alleged in Items 1, 2, 3, 4(a), 4(b), 5, 6(a), 6(c), and 7(b) and a civil penalty of \$15,000 for the probable violation alleged in Item 7(a). Having already determined that Item 7(b) is not supported by the evidence of record, I am withdrawing the \$15,000 civil penalty for Item 7(a).

With respect to the remaining Items, Alon offered three general arguments for a reduction or an elimination of the entire civil penalty: (1) that the company was acting in good faith to improve its IMP at the time of the OPS inspection; (2) that PHMSA's IMP regulations "were new, complex, not well defined, and ever changing;" and (3) that the presence of conflicting state IMP regulations rendered compliance with the corresponding federal standards confusing and

²² Response at Attachments 9.0 and 9.1.

difficult. Upon consideration of the evidence of record, the assessment criteria, and Respondent's arguments, I find that each of the proposed civil penalty amounts is justified.

On the issue of good faith, it should be noted that Alon had more than 18 months after the February 2002 OPS-TRC inspection to bring its IMP program into compliance, but nonetheless failed to achieve that objective. Furthermore, it appears that most of its efforts to comply with the regulations occurred only days before the August 2003 OPS inspection, including the long-overdue revision of its March 2002 IMP. Indeed, as the August 2003 OPS inspector noted in his report, "the first traceable iota of movement with respect to Alon's [IMP] in the previous 16 months" occurred when the company hired its new consultant some two weeks prior to the inspection. Such belated efforts can hardly be characterized as a good faith attempt by Alon to achieve full and timely compliance with 49 C.F.R. § 195.452.

With regard to the content of the IMP requirements, the regulations are performance-based, not prescriptive, and that can place a unique burden on operators in terms of achieving compliance. However, that is why the OPS-TRC team provided Alon with guidance on complying with the requirements of 49 C.F.R. § 195.452 during the February 2002 inspection. It is also why PHMSA has made a range of additional IMP-related information available on its website.²³ Other operators have used that information to develop fully compliant IMPs within the allotted timeframes, but Alon did not. The reason for that failure lies, in the words of the OPS inspector, in Respondent's "overall . . . lack of responsiveness and lack of any action whatsoever," not any perceived conflict between the federal and state regulations.

In terms of the gravity of the offenses, Respondent's failure to comply with these deadlines was particularly serious. Indeed, the company still had not identified all of its Category 1 pipeline segments that could affect HCAs as late as August 2003, some 18 months after the applicable regulatory deadline. Similarly, Alon had no viable IMP in place at that time of the 2003 inspection, an omission that allowed, as the OPS inspector noted, Respondent to operate its "crude [oil] line between Big Spring . . . and Corpus Christy, [Texas,] . . . with un-remediated, 'immediate' anomalies in the line" in defiance of the regulations for an extended period of time.²⁴

In summary, Alon knew of its responsibility to meet the various deadlines in the IMP requirements. It also had the added benefit of a prior TRC-OPS inspection, one specifically designed to facilitate Respondent's compliance with the IMP regulations. PHMSA also issued a Notice of Amendment to Alon following that inspection, highlighting many of the fundamental deficiencies in its IMP, and later ordered the company to correct those deficiencies. Despite having the advantage of these prior actions by federal and state regulators, the company still took

²³ Implementing Integrity Management for Hazardous Liquid Operators, <http://primis.phmsa.dot.gov/iim/index.htm> (accessed on Jun. 17, 2009).

²⁴ See 49 C.F.R. § 195.452(h) (requiring operators to take appropriate action to detect and remediate anomalous conditions that could reduce pipeline integrity).

little meaningful action to address the basic problems in its IMP until days before the August 2003 inspection. In so doing, Alon increased the risk of harm to life, property and the environment (including in HCAs) for more than a year's time.

For these reasons, I find that a civil penalty of \$200,000 for the violations of 49 C.F.R. § 195.452 established in Items 1, 2, 3, 4(a), 4(b), 5, 6(a), 6(c), and 7(b) is appropriate. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$ 200,000.

PAYMENT OF PENALTY

Payment of the \$200,000 civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury.

Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$200,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 1 through 9 for violations by Respondent of 49 C.F.R. § 195.452. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of a hazardous liquid or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. The Director has indicated that Respondent has taken the following actions specified in the proposed compliance order:

With regard to Items 1 through 6(c) and Items 7(b) and 8, Alon has submitted a copy of its current written IMP and a review of that document has shown that Respondent has sufficiently resolved the violations of 49 C.F.R. § 195.452 identified in the Notice, subject to possible verification and scrutiny on re-inspection.

Accordingly, since compliance has been achieved with respect to these violations, the compliance terms are not included in this Order.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a petition for reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The terms of the order, including any required corrective action and amendment of procedures, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

By: J. D. Wiese For

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

08-06-2009

Date Issued